IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4853 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABUTALIB PIRUMIYA MALEK - Petitioner(s)
Versus
COMMISSIONER OF POLICE OF THE CITY OF VADODARA & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MS.MD MEHTA AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 05/09/2007

ORAL JUDGMENT

1. By the present petition under Article 226 of the Constitution, petitioner has sought the relief of order dated 10.01.2007 of his detention being set aside. That impugned order dated 10.01.2007 is issued by Police Commissioner,

Vadodara in exercise of his powers conferred under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) on the basis that the petitioner was found to be repeatedly indulging in anti-social activity of bootlegging and an offence being III-C.R.No.689 of 2006 under the Prohibition Act was registered on 25.12.2006 against the petitioner in Panigate Police Station of Vadodara. According to the grounds of detention supplied with the impugned order, even as the aforesaid offence was being investigated, other actions under the Prohibition Act were not possible and alcohol being injurious to health, there was likelihood of danger to public health on account of consumption of illicit liquor in which the petitioner was dealing. It is further stated that possibility of the petitioner continuing in anti-social activities could not be denied and hence it was found to be necessary to detain the petitioner after considering the documents and statements which were relied upon and supplied to the petitioner.

2. Even as the present petition was admitted on 22.02.2007 and Rule was made returnable on 11.05.2007 and an affidavit-in-reply of the detaining authority was ready and executed on 21.05.2007, it was submitted to this court and copy thereof supplied to the petitioner only on

05.09.2007 when the matter was taken up for final hearing. It is stated in that affidavit, *inter alia*, that *prima facie* involvement of the petitioner was established in the offence registered against him. It is further stated: *"I say and submit that the petitioner is doing his activities one after another, therefore, the petitioner has been detained under the provisions of section 2 (b) of PASA as "bootlegger". I say and submit that the petitioner is illegally selling the foreign liquor, which is injurious to health and also likely to create health hazard in general public. I say and submit that there is no question of recording the statements of witnesses. Thus, the petitioner is not disturbing the law and order, but disturbing the public order. Therefore, after subjectively satisfied myself, I passed the order of detention and the same is just, legal and proper"*. While arguing on the basis of the said affidavit, learned A.G.P. Ms.M.D. Mehta fairly conceded that the co-detenu detained under identical order passed on the same grounds and material was already released upon the order of detention being set aside by this Court by its order dated 22.08.2007 in Special Civil Application No.7443 of 2007. It was also fairly conceded that neither any distinguishing feature from that case nor any additional arguments were available for the respondents.

3. As held by this court in ***Amarbhai Kanjibhai Nayak v. Commissioner of Police, Ahmedabad City & Ors. [1993 (3) G.L.R. 2703]*** and in ***Sohanlal Surajaram Visnoi v. State of Gujarat [2004 (2) G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of sub-section (4) of section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction. Even otherwise, the impugned order as well as the defence taken in the affidavit-in-reply clearly appeared to be without application of mind and can only be deprecated in view of its consequences.

4. Therefore, in the facts and circumstances, the impugned order dated 10.01.2007 of preventive detention is found and held to be unsustainable in law and set aside with the direction that the petitioner shall be set at liberty forthwith unless required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(D.H.WAGHELA, J.)

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